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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 203 (RJS)

5 DARRELL BENNETT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 5, 2014
10:15 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

EUN YOUNG CHOI

17 Assistant United States Attorney

18 PEGGY CROSS-GOLDENBERG

19 Attorney for Defendant Bennett
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1 (Case called)

2 MS. CHOI: Eun Choi, on behalf of the government.

3 THE COURT: Ms. Choi, good morning to you.

4 And for the defendant?

5 MS. CROSS-GOLDENBERG: The Federal Defenders of New
6 York by Peggy Cross-Goldenberg. With me at counsel table with
7 your Honor's permission is Siju Moore of our office who is not
8 yet admitted to this bar, although he is admitted in other
9 states.

10 THE COURT: Mr. Moore, good morning.

11 Everyone, good morning.

12 Mr. Bennett, good morning to you.

13 THE DEFENDANT: Good morning, your Honor, sir.

14 THE COURT: As I understand it, Mr. Bennett wishes to
15 withdraw his previously entered plea of not guilty and plead
16 guilty to Count One of the indictment; is that correct?
17 Information.

18 MS. CROSS-GOLDENBERG: That's correct, your Honor, the
19 information, yes, that's correct.

20 THE COURT: All right. Mr. Bennett, before I accept
21 your guilty plea I am going to ask you some questions here in
22 court and the purpose of these questions here is really
23 two-fold. First, to make sure that you fully understand your
24 rights, that you have of a defendant in a criminal case. And
25 second to make sure that you are pleading guilty because you

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1 are guilty and not for some other reason. If as I am asking
2 you these questions you don't understand the question, let me
3 know that. I'll rephrase it or explain it better. If at any
4 point you want to confer with Ms. Cross-Goldenberg or Mr. Moore
5 or both before answering questions, that's fine. I'll give you
6 as much time as you need.

7 In a moment I'm going to ask you to take an oath and
8 this will be an oath that you will truthfully answer the
9 questions that I put to you. If after taking that oath you
10 were to make any false statements here in court that would be a
11 separate crime, the crime of perjury or obstruction of justice.
12 And I tell you that not to scare you but just to remind you
13 that it's very important that you be careful and deliberate and
14 complete and truthful in all your answers to my questions. OK?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Any questions so far?

17 THE DEFENDANT: No, sir, your Honor.

18 THE COURT: All right. So let me ask you to stand and
19 if you could raise your right hand.

20 (Defendant Darrell Bennett sworn)

21 THE COURT: OK. All right. Have a seat.

22 Could you tell me your full name, Mr. Bennett.

23 THE DEFENDANT: Darrell J. Bennett, Jr., sir.

24 THE COURT: How old are you?

25 THE DEFENDANT: 29 years old.

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1 THE COURT: How far did you go in school?

2 THE DEFENDANT: Law school, your Honor.

3 THE COURT: That's right. I remember that. Are you
4 now or have you recently been under the care of a doctor or a I
5 psychiatrist?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: OK. And tell me about that. What's the
8 nature of the treatment that you are getting?

9 THE DEFENDANT: It's court mandated weekly sessions
10 with a young lady by the name of Drea Poppavick.

11 THE COURT: That's since you were arrested in this
12 case?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: Prior to that have you been under the care
15 of or treatment of a doctor or psychiatrist?

16 THE DEFENDANT: Yes, sir, your Honor.

17 THE COURT: OK.

18 THE DEFENDANT: At Harlem Hospital clinic.

19 THE COURT: What's the nature of the treatment there?

20 THE DEFENDANT: I was being assessed because I was
21 having problems sleeping, your Honor.

22 THE COURT: OK. And are you taking any medication for
23 any of this treatment?

24 THE DEFENDANT: Yes, sir, your Honor. I take
25 Seroquel.

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1 THE COURT: What is that? To help you sleep?

2 THE DEFENDANT: Yes, sir, your Honor.

3 THE COURT: How often do you take it?

4 THE DEFENDANT: Nightly.

5 THE COURT: Every night?

6 THE DEFENDANT: Pretty much so.

7 THE COURT: Does that drug affect your memory, your
8 judgment, your ability to think clearly at all?

9 THE DEFENDANT: No, sir, your Honor.

10 THE COURT: You took it last night?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are there any other medications that you
13 are taking at this time?

14 THE DEFENDANT: No, sir, your Honor.

15 THE COURT: All right. Have you ever been treated or
16 hospitalized for any kind of mental illness?

17 THE DEFENDANT: Yes, sir, your Honor.

18 THE COURT: Tell me about that.

19 THE DEFENDANT: It happened in my last year at law
20 school. I was facing some depression and I went to see someone
21 but I only stayed for the day.

22 THE COURT: All right. And that was about how long
23 ago, approximately?

24 THE DEFENDANT: 2010, your Honor.

25 THE COURT: All right. And was there any medication

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1 that you were prescribed in connection with that?

2 THE DEFENDANT: No, sir, your Honor.

3 THE COURT: All right. Have you ever been treated or
4 hospitalized for any kind of substance abuse?

5 THE DEFENDANT: No, sir, your Honor.

6 THE COURT: OK. In the last two days other than the
7 medication you took last night, have you taken any alcohol or
8 pills or drugs or medicines of any kind?

9 THE DEFENDANT: No, sir, your Honor.

10 THE COURT: Is your mind clear today, Mr. Bennett?

11 THE DEFENDANT: Yes, sir, your Honor.

12 THE COURT: Do you understand the nature of this
13 proceeding and what's going to take place here today?

14 THE DEFENDANT: Yes, sir, I do.

15 THE COURT: Ms. Cross-Goldenberg, do you have any
16 doubts as to Mr. Bennett's mental competence or his ability to
17 enter an informed plea?

18 MS. CROSS-GOLDENBERG: No, your Honor.

19 THE COURT: Ms. Choi, do you have doubts?

20 MS. CHOI: No, your Honor.

21 THE COURT: All right. Neither do I. Based on
22 Mr. Bennett's representations and responses to my questions
23 today, based on his demeanor today and on prior occasions when
24 I've seen him, based also on the representations of counsel and
25 the government lawyer, I find that Mr. Bennett is fully

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1 competent to enter an informed plea.

2 So Mr. Bennett, as I understand you wish to plead
3 guilty to see to Count One of the information, is that correct?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: All right. Do you feel you have had
6 enough time to consider this case and in any possible defenses
7 you might have to the charges in this information?

8 THE DEFENDANT: Yes, sir, your Honor, I have.

9 THE COURT: Have you had enough time to discuss that
10 with your attorney, Ms. Cross Goldenberg?

11 THE DEFENDANT: Yes, sir, your Honor.

12 THE COURT: Are you satisfied with Ms. Cross
13 Goldenberg's representation of?

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: Well, what I want to do now is I want to
16 describe for you certain rights that you have as a defendant in
17 the case. And I'm going to do that in two ways. First I am going
18 to ask you about a document which I think that you should have
19 in front of you and it's called an Advice of Rights form. Do
20 you see that?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: I'm going to ask you about that document,
23 then I'll also ask you some questions here in open court that
24 will cover a lot of the same grounds. And I do that because
25 these rights are so important and your understanding is so

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1 crucial I don't want to leave anything to chance. So let's
2 start with that form, the Advice of Rights form. Is that your
3 name on the second page? Is that your signature?

4 THE DEFENDANT: Yes, sir your Honor.

5 THE COURT: Before you signed that document did you
6 read it?

7 THE DEFENDANT: Yes, sir, your Honor.

8 THE COURT: And did you have an opportunity to discuss
9 it with Ms. Cross Goldenberg?

10 THE DEFENDANT: Yes, sir, your Honor.

11 THE COURT: You were able to ask her any questions
12 about what that document means or what the rights described in
13 that document entail, is that true?

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: All right. And Ms. Cross Goldenberg, is
16 your signature on the document as well?

17 MS. CROSS-GOLDENBERG: Yes, your Honor.

18 THE COURT: Before you signed it you reviewed it your
19 client?

20 MS. CROSS-GOLDENBERG: Yes, your Honor.

21 THE COURT: You were able to answer any questions that
22 he had?

23 MS. CROSS-GOLDENBERG: Yes.

24 THE COURT: If you would hand that up to me I'll mark
25 it as a Court Exhibit. I'll call it Court Exhibit One and I'll

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1 date and initial it.

2 But as I said, Mr. Bennett, sometimes what looks clear
3 as a bell, clear as day on a two-page form when you hear the
4 rights described in open court sometimes it prompts further
5 questions. If that's the case here, don't be shy. We're in no
6 rush. It's really important that you understand these rights.
7 You're an attorney and you've studied the law so you are
8 probably more sophisticated than most but that doesn't mean you
9 won't have questions. And in same ways your training might
10 make you have more questions. There's nothing wrong with that.
11 OK?

12 THE DEFENDANT: Yes, sir, your Honor.

13 THE COURT: Well, the first right that I want to
14 discuss with you is a pretty basic one. Under the Constitution
15 you have the right to a speedy and public trial by a jury on
16 the charges contained in the information. Do you understand
17 that?

18 THE DEFENDANT: Yes, sir, your Honor.

19 THE COURT: At trial you would be presumed to be
20 innocent and the government would have the burden of
21 introducing competent evidence to prove that you were guilty
22 beyond a reasonable doubt; do you understand that?

23 THE DEFENDANT: Yes, sir, your Honor.

24 THE COURT: The jury would have to be convinced beyond
25 a reasonable doubt and they would have to be unanimous on that

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1 point before you could be found guilty; do you understand that?

2 THE DEFENDANT: Yes, sir, your Honor.

3 THE COURT: You wouldn't have to do anything. You
4 wouldn't have to prove that you were innocent if you went to
5 trial; do you understand that?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: The burden would always be on the
8 government to prove its case, to prove your guilt beyond a
9 reasonable doubt. Now at trial and at every stage of your case
10 you would be entitled to be represented by attorney. And if
11 you couldn't afford an attorney then one would be appointed for
12 you at no cost to you; do you understand that?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: And in this case Ms. Cross-Goldenberg has
15 been appointed to represent you at no cost to you, correct?

16 THE DEFENDANT: Yes, sir, your Honor.

17 THE COURT: All right. Now, if there were a trial
18 then the witnesses for the government would have to come into
19 court and they would have to testify here in your presence; do
20 you understand that?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: That's because as I think you probably
23 know, you have a right to confront your accusers and that would
24 mean that you would have the right to hear and see the
25 testimony of the witnesses that the government brought in.

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1 They'd sit here in this witness box. You could see their
2 testimony and hear their testimony. That would be your right.
3 Do you understand that?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: At trial your attorney,
6 Ms. Cross-Goldenberg, if there were a trial, would have the
7 opportunity to cross-examine those witnesses, to ask them
8 questions, to test their veracity, to test their accuracy, to
9 test what they know, what they're talking about. She'd have
10 the opportunity to object to the government's evidence if they
11 thought there was a basis to do so; do you understand that?

12 THE DEFENDANT: Yes, sir, your Honor.

13 THE COURT: Now you yourself if you wanted to you
14 could call witnesses and you could introduce evidence; do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You wouldn't have to. You would have no
18 obligation to do anything. You could sit silently and do
19 nothing. But if you wanted to you could put on a case, call
20 witnesses, introduce evidence. Do you understand that?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: Now, if there were witnesses that you
23 wanted to call as part of your case and they told you no way, I
24 am not coming to court, that's the last place I want to be, I
25 won't come, well, that wouldn't be the end of the story because

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1 if they had that attitude you could issue subpoenas or have
2 other process used to compel them to come to court and to
3 testify truthfully under oath. Do you understand that?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: You yourself would have the right to
6 testify at trial if you wanted to but you'd also have the right
7 not to testify. And if you chose not to testify the jury could
8 attach no significance to that fact. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: I would tell the jury as I do in every
11 case that goes to trial that the defendant is presumed
12 innocent, the defendant has no burden to put on any evidence at
13 all. The burden always rests with the government. And if the
14 defendant chooses not to testify you, the jury, may attach no
15 significance to that fact. Do you understand that?

16 THE DEFENDANT: Yes, sir your Honor.

17 THE COURT: Now, if the jury returned a guilty verdict
18 against you you then would have the right to appeal the jury's
19 verdict. Do you understand that?

20 THE DEFENDANT: Yes, sir, your Honor.

21 THE COURT: I guess you could first ask me to overturn
22 the jury's verdict and if I conclude there was insufficient
23 evidence I could do that. But if I decline to do that you
24 would then have the right to appeal above me to the Court of
25 Appeals and ask the Court of Appeals to overturn the verdict or

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1 to order a new trial based on errors or other things that
2 happened at trial. Do you understand that?

3 THE DEFENDANT: Yes, sir, your Honor.

4 THE COURT: Even now, Mr. Bennett, as you are
5 preparing enter a guilty plea you have the right to change your
6 mind. We haven't yet crossed the point of no return. If you
7 told me right now, I changed my mind, I'd like to go forward
8 with trial, that would be fine. I wouldn't be upset with you.
9 Your lawyers would not be upset with you, nor would the
10 government's lawyer. We all understand this is your decision
11 and we respect whatever decision you make. Do you understand
12 that?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: Do you nevertheless want to go forward
15 with a guilty plea at this time?

16 THE DEFENDANT: Yes, sir, your Honor.

17 THE COURT: Do you understand that if you plead guilty
18 that means there will be no trial in this case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You will have waived your right to a trial
21 and all the other rights that I just mentioned. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir, your Honor.

24 THE COURT: I guess the only exception to that would
25 you be your right to counsel which would continue. You

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1 wouldn't waive that right. Ms. Cross-Goldenberg would continue
2 to represent you today through the plea and also through
3 sentencing and through an appeal if there were appeal. And
4 your right to appeal would not be waived. Though by leading
5 guilty you almost certainly wouldn't be able to appeal whether
6 or not you committed this crime. You might be able to appeal
7 the sentence or some other things but probably not the fact of
8 committing the crime. Do you understand that?

9 THE DEFENDANT: Yes, sir, your Honor.

10 THE COURT: You should also know that by pleading
11 guilty that you will then be sentenced on the basis of that
12 guilty plea. Not today but ultimately the sentence I impose
13 will reflect the crime that you've pled guilty to. Do you
14 understand that?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: I guess this last point I want to make
17 sure you understand is that before I will accept your guilty
18 plea I'm going to ask you to tell me what you did that makes
19 you guilty of this crime. And the reason I do that is to
20 satisfy myself that you are pleading guilty because you are
21 guilty and not for some other reason. But in asking you to
22 tell me what you did that makes you guilty of this crime I am
23 asking you to give up an important right and that's your right
24 not to incriminate yourself. So I want to make sure you are
25 prepared to do that, you understand you have that right but

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1 that you'd giving up that right in order to tell me what I need
2 to hear to accept your guilty plea. Do you understand that?

3 THE DEFENDANT: Yes, sir, your Honor.

4 THE COURT: And you are prepared to do that?

5 THE DEFENDANT: Yes, sir, your Honor.

6 THE COURT: OK. Do you have any questions about any
7 of these rights, Mr. Bennett?

8 THE DEFENDANT: No, sir, your Honor.

9 THE COURT: All right. And you want to proceed with
10 the guilty plea at this time?

11 THE DEFENDANT: Yes, sir, your Honor.

12 THE COURT: OK. Well, let's take a minute to talk
13 about the charge against you. You have been charged in an
14 information and I think I explained information to you before
15 but have you received a copy of the information and read it?

16 THE DEFENDANT: Yes, sir, your Honor.

17 THE COURT: You've discussed it with
18 Ms. Cross-Goldenberg?

19 THE DEFENDANT: Yes, sir, your Honor.

20 THE COURT: And you are charged with in one count with
21 possessing and accessing child pornography, a violation of
22 Title 18 U.S.C. Section 2252(A) sub A Section 5B. That's what
23 you've been charged with. Do you understand that?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: All right. Now I am going to ask Ms. Choi

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1 to summarize the elements of this crime. If any one of these
2 elements was not found by the jury beyond a reasonable doubt
3 you couldn't be convicted at trial and if any one of these
4 elements are not demonstrated to my satisfaction then I
5 couldn't accept your guilty plea. So these are the elements.
6 Listen carefully to Ms. Choi as she summarizes them. If when
7 she's finished you have any questions, let me know.

8 THE DEFENDANT: Yes, sir.

9 MS. CHOI: Your Honor, at trial the government would
10 have to the prove four elements beyond a reasonable doubt.

11 First, that the defendant knowingly possessed or
12 knowingly accessed a visual depiction which is defined as any
13 photograph, film video or picture including undeveloped film or
14 videotape and data stored on a computer disk or by electronic
15 means which is capable of conversion into a visual image.

16 Second, the visual depiction was transported in or
17 effecting interstate or foreign commerce or was produced using
18 materials that had been transported in or effecting interstate
19 or foreign commerce.

20 Third, that the visual depiction was child pornography
21 which means the production of visual depiction involved the use
22 of a minor engaging in sexually explicit conduct and portrayed
23 the minor engaging in that conduct.

24 Fourth, the defendant knew of the sexually explicit
25 nature of the material and the visual depiction was of an

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1 actual minor engaged in sexually explicit conduct.

2 THE COURT: All right. So those are the elements. Do
3 you have any questions about those elements, Mr. Bennett?

4 THE DEFENDANT: No, sir, I don't.

5 THE COURT: I guess there's one other thing the
6 government would have to prove at trial and that is that some
7 or part of this crime took place in the Southern District of
8 New York and that's known as the venue requirement. I think
9 you understand this but the United States is divided up into
10 about 95 districts. We're in the Southern District of New York
11 which is Manhattan, the Bronx, Westchester, Rockland, Orange,
12 Putnam and a few other counties. If it all took place in New
13 Jersey then it couldn't be charged here. That venue
14 requirement doesn't have to be proven beyond a reasonable
15 doubt. All the other elements that Ms. Choi mentioned would
16 have to be demonstrated beyond a reasonable doubt. Venue, the
17 standard is lower by a preponderance of the evidence. So it
18 just means that the greater weight of the evidence would
19 demonstrate that something took place here. So that's one of
20 the requirements or one of the other things that would need to
21 be established. Any questions about venue?

22 THE DEFENDANT: No, sir, your Honor.

23 THE COURT: All right. So let me spend a minute just
24 reminding you what the penalties are for this crime. This
25 crime carries a maximum term of imprisonment of ten years. It

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1 also carries a maximum term of supervised release of life, as
2 well as a mandatory minimum term of supervised release of five
3 years. This crime also carries a maximum fine of the greatest
4 of either \$250,000 or twice the gross gain derived from this
5 crime or twice the gross loss to persons other than yourself
6 that resulted from the crime. So whichever those three
7 alternatives is the greatest that's the maximum fine that I can
8 impose.

9 In addition to a fine I can also order that you pay
10 restitution to any person or entity that was harmed as a result
11 of this crime and that's separate from a fine. I can also
12 order you to forfeit any property other proceeds derived from
13 this crime. The law basically provides that a person should
14 shouldn't not profit from a crime so that Court is authorized
15 to order a defendant to forfeit any proceed from the crime that
16 they or their co-conspirators made or any property used to
17 facilitate the crime and again that's separate from the fine,
18 separate from restitution.

19 And then finally there's a \$100 special assessment
20 that's mandatory and has to be paid and that also is separate
21 from any fine, forfeiture for restitution.

22 Do you have any questions about those penalties?

23 THE DEFENDANT: No, sir, your Honor.

24 THE COURT: You should understand that as a result of
25 your plea to this offense you may be required, in fact, you

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1 would be required to register as a sex offender under the Sex
2 Offender Notification Act; do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That could be onerous but it's just
5 something that you should be aware of and have thought about
6 before you plead guilty. So that's something you've considered
7 and discussed with your attorney?

8 THE DEFENDANT: Yes, sir, your Honor.

9 THE COURT: All right. You should also understand as
10 a result of your guilty plea you could face the possibility of
11 civil commitment under the Adam Walsh Child Protection Safety
12 Act following the completion of any term of imprisonment. That
13 act permits the attorney general or director of the Bureau of
14 Prisons to certify that a prisoner approaching the end of his
15 in incarceration is a sexually dangerous person. And if at a
16 hearing before a court the government demonstrates by clear and
17 convincing evidence that the inmate is sexually dangerous, then
18 the inmate could be committed to further custody until the
19 Court determines that he is no longer sexually dangerous.
20 Again, I don't know if that would apply here but that's a
21 statute that might be relevant given the nature of the crime.
22 Do you understand that?

23 THE DEFENDANT: Yes, sir, your Honor.

24 THE COURT: OK. Are you a citizen, Mr. Bennett?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: You should understand that as a result of
2 your guilty plea you could lose certain valuable rights such as
3 the right to vote, the right to serve on a jury, the right to
4 hold public office, and the right to possess a firearm. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: Now with respect to supervised release
8 should understand that there are terms and conditions that will
9 be imposed as a part of supervised release and that if you
10 don't comply with any of those terms and conditions well then,
11 you could be returned to jail for a full term of your
12 supervised release without my credit for the time you'd already
13 served on supervised release; do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: I should also mention that there is no
16 parole in the federal system. So whatever sentence I impose on
17 you that is the sentence that you will serve; do you understand
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: New York state and a lot of other
21 countries have parole and that means that the judge would
22 impose a sentence but that later a parole order or some actor
23 might decide this person is ready to come home sooner. That's
24 not part of the federal system. So if I sentence you to five
25 years, then you will serve five years. If I sentence to you

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1 ten years, you would serve ten years. The only exception to
2 that is you could get a certain amount of time off for good
3 behavior. But that amount of time off would not be more than
4 15 percent of the total sentence and the decision as to whether
5 you had demonstrated good behavior would be up to the Bureau of
6 Prisons, not up to me. Do you understand that?

7 THE DEFENDANT: Yes, sir, your Honor.

8 THE COURT: Are you serving any other sentence at this
9 time any place?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. The decision as to what
12 sentence you will receive will be made by me and no one else.
13 So no matter what anyone else has told you I am not bound by
14 that. I have to make my own decision and exercise my own
15 judgment in determining what is the appropriate sentence in
16 this case; do you understand that?

17 THE DEFENDANT: Yes, sir, your Honor.

18 THE COURT: Now there are certain factors that I am
19 required to consider. Congress has passed a statute that
20 identifies certain factors that judges must take into account
21 in fashioning a sentence and I want to go over what those are.

22 First of all, I have consider your own personal
23 history. You're a complicated person like everybody, so I have
24 to make sure that the sentence I impose reflects who you are.
25 It's not based solely on the crime but on the totality of the

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1 person before me. I have to tailor the sentence to you, the
2 individual. So I am going to look at your entire life from
3 your birth to the present in all its richness and
4 complicatedness, I guess is the word I am looking for. You
5 know, your childhood, your educational history, your work
6 history, your psychological history, your family circumstances
7 and family connections. All those things matter and will be
8 relevant to the sentence that I impose.

9 Now I have to balance that against other factors
10 including the facts and circumstance of the crime. This is a
11 very serious crime obviously and it's important that the
12 sentence I impose reflect the seriousness of the crime. So I
13 need to make sure that the sentence is also tailored to the
14 circumstances of this crime, not just what it's called but what
15 happened here, what you did, what others did, what the
16 consequence were. I have to make sure that the sentence I
17 impose amounts to just punishment and that it also promotes
18 respect for the law.

19 Another factor that's related but distinct is the need
20 to deter or discourage future criminal conduct by you and
21 others and the hope is that by imposing a sentence on you in
22 this case it will send a message to you that you can't engage
23 in conduct like this in the future and that hopefully this will
24 be the last criminal act of your life. But also the hope is
25 that other people might learn about your sentence and be

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1 educated by it, that they would be deterred or discouraged from
2 committing crimes like this in the future because they
3 understand and recognize the costs associated with such crime.
4 It's hard to know candidly what the future will hold or what
5 message will be received when I impose a sentence in one case.
6 But I think most of us recognize there is something to that and
7 Congress has certainly directed judges like me to consider the
8 possible future deterrence that would be associated with a
9 sentence I impose. So I'll consider that.

10 Other factors I have to consider are your own needs
11 while you are in custody. To the extent you have mental health
12 needs or other health needs I'll make sure that those are
13 addressed when I impose sentence.

14 Another important factor I have to consider is what's
15 known as the United States Sentencing Guidelines. Have you
16 heard of those?

17 THE DEFENDANT: Yes, sir, I --

18 THE COURT: The Sentencing Guidelines are a big book
19 put out by a commission of judges and lawyers and experts in
20 the field and there's a new edition each other. Sometimes
21 there's minor amendments. The current version is about five or
22 six hundred pages long. But the point is that this book is
23 designed to give guidance to judges like me. So for every
24 crime or type of crime there's a chapter in this book. And a
25 judge is directed to go to the chapter for the relevant crime

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1 and to make certain findings of fact. And then based on those
2 findings of fact the judge assigns points and goes through a
3 pretty rudimentary sort of process of addition and subtraction
4 to come up with a number and that number is referred to as
5 offense level.

6 The judge then goes to a different chapter in the book
7 that relates to criminal history and makes a similar analysis.
8 The judge determines whether the defendant has any prior
9 convictions and if so when. If they're really old maybe they
10 don't count. If there are prior convictions that result in
11 sentences the judge will consider what the nature of the
12 sentence was and the length of the sentence. And depending on
13 the answers to those questions the judge will assign points, go
14 through another process of addition to come up with a total
15 number of points and that then leads to the judge deciding
16 which of six criminal history categories applies. There are
17 six. Category one is the lowest and least serious. Category
18 six is the highest and most serious.

19 And then on the basis of those two findings the
20 offense level on the one hand, the criminal history category on
21 other, the judge then goes to the back of the book where
22 there's a grid or a table and simply kind of just goes down
23 this column here on the far left which is the offense level,
24 stops when he or she gets to the proper offense level and then
25 goes across from left to right to these other columns which are

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1 the criminal history categories and the judge stops when he or
2 she gets to the appropriate criminal history category. And
3 where the judge's finger ultimately rests well that's the range
4 within the view of the commission that prepares this book would
5 be appropriate. So every judge is directed to go through that
6 process and to make these findings. Now ultimately, I am not
7 bound by this book I am free to go higher or lower. But I am
8 required to consider the book. I am required to make findings
9 under the guidelines and I will do that.

10 And then finally I guess the last factor that I am
11 required to consider is the need to avoid unwarranted
12 sentencing disparities between the sentences of similarly
13 situated defendants. And that's sort of a fancy way of saying
14 that before imposing sentence a judge is really asked to take a
15 step back and to make sure that the sentence being imposed is
16 roughly in line with what other judges have imposed on similar
17 defendants elsewhere, recognizing that it would undermine
18 people's confidence and undermine respect for the law if
19 defendants who were very similar and had engaged in very
20 similar crimes were getting wildly different sentences simply
21 because of who the judge was or who the lawyers were. So
22 judges are asked to take that into account to make sure that
23 the sentences roughly line up recognizing that of course no two
24 people are exactly alike and no two crimes are exactly alike.
25 So those are the factors that I am required to consider. Do

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1 you have any questions about any of those?

2 THE DEFENDANT: No, sir, your Honor.

3 THE COURT: All right. And the tough part is, of
4 course, balancing these things. Sometimes they are
5 intentional. So a judge's job is to consider balance, weigh
6 and ultimately reconcile these various objectives in fashioning
7 a sentence on an individual. So that is what I will do now
8 that will take some time. It'll take a few months before I do
9 that but that's the process, all right.

10 Now I understand there's no plea agreement in this
11 case I have received a copy of the letter that I believe the
12 government sent to you, Mr. Bennett. It's a letter dated
13 September 4 signed by Ms. Choi, addressed to
14 Ms. Cross-Goldenberg. It's a four-page letter. Have you seen
15 this letter?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You've read it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You've discussed it with
20 Ms. Cross-Goldenberg?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: This is not a plea agreement. You are
23 bound by this letter. This is really just the government
24 putting you on notice of the government's view as to how the
25 sentencing guidelines apply in this case. There was a time

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1 when these guidelines were mandatory. You may know that from
2 your legal training. That changed with a Supreme Court case
3 around 2004 or 2005. But while they were mandatory there was a
4 case in this circuit called U.S. v. Pimentel in which the Court
5 said the best practice is to notify defendants of the
6 government's view of the guidelines and how they apply in the
7 case before a guilty plea. That practice continues even now
8 that the guidelines are no longer mandatory. And so this is to
9 put you on notice as what the government's view is, at least as
10 of today. Things could change I suppose but this is their view
11 as of today. So you've seen.

12 The government's view is that the offense level in
13 this case is level 33. The government's view is the criminal
14 history category is category one. And taken together that
15 results in a sentencing range of 135 to 168 months but the
16 maximum sentence here is 120 months. So in the government's
17 view that would be an appropriate sentence under the
18 guidelines. Do you understand that?

19 THE DEFENDANT: Yes, sir, your Honor. Can I ask
20 Ms. Cross-Goldenberg --

21 THE COURT: Yes.

22 (Pause)

23 THE DEFENDANT: Thank you, your Honor. I appreciate
24 it.

25 THE COURT: That's quite all right. I told you

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1 upfront I want you to take advantage of that if you are not
2 sure of anything.

3 This is the government's view and you are free to
4 argue that the guidelines are lower and you are free to argue
5 lots of other things at sentencing. So this is not a
6 restriction on you at all and it's not a restriction on me
7 either. I'll make my own findings with respect to the other
8 factors I've mention. My question to you is has anybody
9 threatened you in order to make you plead guilty here today?

10 THE DEFENDANT: No, sir, your Honor.

11 THE COURT: Has anybody offered you anything of value
12 in exchange for pleading guilty here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anybody promised what your sentence
15 will be?

16 THE DEFENDANT: No, sir, your Honor.

17 THE COURT: Ms. Cross-Goldenberg, are you aware any of
18 defense that would prevail or any reason why Mr. Bennett should
19 not be allowed to enter a guilty plea today?

20 MS. CROSS-GOLDENBERG: No, your Honor.

21 THE COURT: OK. All right. So, Mr. Bennett, I guess
22 at this time I'll ask you to tell me in your own words what it
23 is that you did that makes you guilty of this crime. Sometimes
24 I ask people to stand but the acoustics are terrible and
25 microphone is set, so go ahead.

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1 THE DEFENDANT: I possessed images containing child
2 pornography on my computer in my apartment in Manhattan. I
3 know what I did was wrong and I am very sorry and remorseful
4 for my actions.

5 THE COURT: When did this take place?

6 THE DEFENDANT: This took place in 2012.

7 THE COURT: 2012, all right. And you said it was, the
8 computer was in your apartment in Manhattan?

9 THE DEFENDANT: Yes.

10 THE COURT: The images that were contained you
11 understood them and knew them to be child pornography as that
12 term is defined?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You said a moment ago that you understand
15 that it was wrong and illegal for you to do that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Ms. Choi, is that a
18 satisfactory allocution? Is there anything else?

19 MS. CHOI: Not of Mr. Bennett. The government would
20 just note for the record that with regard to the second element
21 the interstate and foreign commerce element, there is a NIKMIK
22 analysis of the images that were found on the computer hard
23 drive found in Mr. Bennett's apartment and those victims have
24 been identified as being outside of the Southern District of
25 New York and outside of the state of New York.

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1 MS. CROSS-GOLDENBERG: I am sorry. I couldn't
2 understand. You trailed off.

3 THE COURT: A little louder and a little slower.

4 MS. CHOI: The victims that were identified in the
5 NIKMIK report -- that's the national database for the
6 identification of victims of child pornography in cases such as
7 this -- has identified certain known victims as being outside
8 of the Southern District of New York and the state of New York.
9 So as to satisfy the second element that there would be a
10 transportation of those images through interstate commerce.

11 THE COURT: OK. Ms. Cross-Goldenberg, any questions
12 about that?

13 MS. CROSS-GOLDENBERG: No, your Honor. Just to
14 clarify, I think Mr. Bennett got a little cutoff in terms of
15 the timeframe. The timeframe in the probation which continued
16 to February 2013, just to make the record clear.

17 THE COURT: OK. I think it's almost any time in that
18 period is fine. So we'll flesh all this out more in connection
19 with the sentencing but I think it's a satisfactory allocution.

20 So, Mr. Bennett, I'm going to ask Ms. Choi to
21 summarize the government's proof, what the government would
22 demonstrate if the case went to trial. Listen to what she has
23 to say. If when she's finished you disagree with anything that
24 she has said or you would like to clarify or qualify something
25 that she has said I'll give you an opportunity to do that or

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1 you can confer with Ms. Cross-Goldenberg and she can do it for
2 you. But listen carefully to Ms. Choi.

3 So, Ms. Choi, if the case were to go to trial what
4 would the government demonstrate?

5 MS. CHOI: Your Honor, there would be testimonial
6 evidence both from an undercover law enforcement agent to whom
7 Mr. Bennett distributed child pornography, as well as the hard
8 drive that was recovered from Mr. Bennett's house that
9 contained the images of child pornography. In addition, there
10 are post arrest statements that were made after being advised
11 of his rights by Mr. Bennett in which he admitted to the
12 offense conduct here.

13 THE COURT: All right. Mr. Bennett or
14 Ms. Cross-Goldenberg, anything you would like to --

15 THE DEFENDANT: Sir, may I just ask her?

16 THE COURT: Sure.

17 (Pause)

18 MS. CROSS-GOLDENBERG: Thank you, your Honor.

19 THE COURT: All right. Anything you wish to say in
20 response?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: All right. Well, now let me ask you to
23 stand, Mr. Bennett.

24 Mr. Bennett, how do you now plead to count one of
25 information?

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1 THE DEFENDANT: I plead guilty, your Honor.

2 THE COURT: Did you do the things you are charged with
3 doing in the information?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Are you pleading guilty because you are
6 guilty?

7 THE DEFENDANT: Yes, your Honor, I am.

8 THE COURT: Are you pleading guilty voluntarily and of
9 your own free will?

10 THE DEFENDANT: Yes, your Honor, I am.

11 THE COURT: All right. Mr. Bennett, because you
12 acknowledge that you're guilty as charged in Count One of the
13 information, because you know your rights and you've waived
14 those rights, because your plea is entered knowingly and
15 voluntarily and is supported by an independent basis in fact
16 for each of the elements that we've discussed, I accept your
17 guilty plea and I adjudge you guilty on Count One of the
18 information. So please have a seat.

19 What we are going to do now is set a date for
20 sentencing. Generally, I would set a sentencing date about
21 probably three or four months out and that allows the probation
22 department to prepare a report which is very important in my
23 determining the appropriate sentence. This report is referred
24 to as a presentence report or a PSR and it's often lengthy. It
25 might be 30 pages long single spaced. It has a lot of

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1 information and a lot of information about you your life
2 history and many more details than what I know to date about
3 you. It will also provide a lot more information about the
4 crime that you've pled guilty to and you've sort of covered a
5 bare minimum today. But the presentence report will go into
6 much greater detail of what transferred. It might also include
7 victim statements of children who were depicted. Sometimes
8 they do anyway.

9 The way that information is gathered for the report is
10 by interviewing people principally and so among those
11 interviewed will be you. I assume, Ms. Cross-Goldenberg, you
12 wish to be present?

13 MS. CROSS-GOLDENBERG: Yes, your Honor.

14 THE COURT: I'll direct that no interview should take
15 place without Ms. Cross-Goldenberg being present. But I will
16 ask you to be truthful and complete in all your answers to the
17 probation officer. If you were to make any false statements to
18 the probation officer, that could be a separate crime with its
19 own penalties. It also could result in enhancements or
20 additional points on the sentencing guidelines which would
21 potentially increase your sentence. So I don't say that to
22 scare you but just to remind you that it's really important
23 that you be truthful and accurate and complete in all your
24 answers to the probation office.

25 Now once the report is finished a draft will be sent

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1 to you, so you should read it carefully. Ms. Cross-Goldenberg
2 will do the same. The government will get a copy as well. If
3 there are portion of the report that you disagree with, discuss
4 that with Ms. Cross-Goldenberg. She will then convey any
5 objections or corrections to the probation officer. The
6 probation officer will then issue a final report and that will
7 come to me. That will be the first one that I will see.
8 Again, read it carefully. It may be that the objections that
9 you had before are still there. You should then, again, he
10 reiterate them to Ms. Cross Goldenberg and if there are any
11 portions of the report that you and or she disagree with, she
12 will then make those objections to me. Those will be formal
13 objections. Ms. Choi will have the same opportunity. If there
14 are objections then I will resolve the objections. I'll either
15 have a mini trial or perhaps just have argument from the
16 lawyers. The real issue will be what conclusions or inferences
17 should be drawn. So I will resolve any disputes or objections
18 to the presentence report. I guess the one exception will be
19 if there's some dispute or factor that I think is irrelevant,
20 then maybe I will just -- I don't need to decide. But in any
21 event, read it carefully and discuss it with Ms. Cross
22 Goldenberg.

23 In addition to the presentence report I will also
24 review anything else submitted to me in connection with
25 sentencing. I suspect, that Ms. Cross-Goldenberg will submit a

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1 sentencing memorandum that explains more about you and this
2 crime and makes a recommendation as what would be an
3 appropriate sentence. The government will have the same
4 opportunity. I expect that they will take that opportunity. I
5 will carefully read those, of course.

6 It is not uncommon that sometimes a defendant, himself
7 or herself and sometimes family members or friends of the
8 defendant wish to write letters to the Court prior to
9 sentencing. That's perfectly fine. I am happy to get letters
10 like that. My only request is that if you or others wish to
11 write a letter like that, have the letters go to
12 Ms. Cross-Goldenberg. She'll collect them and then attach them
13 to her submission and that way I'll get everything all at once
14 and I can be confident that I haven't missed anything. So
15 that's the way we should do it. But I certainly will read any
16 letters that I get.

17 Once I've done all that stuff the sentencing date is
18 January 16, 2015 at 11 a.m. I'll ask for the defense's
19 submission by January 2 and the government submission by
20 January --

21 MS. CROSS-GOLDENBERG: Your Honor, is there any way
22 that we could do it within the usual three month span? I
23 understand that the Court's not available but if there is some
24 way we could do it a month earlier --

25 THE COURT: I'm just sort of hanging off of what

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1 probation asked us to do. So today is September 5. They
2 usually ask us to put this out, I guess a little over three
3 months out to allow them the time to do the report and to allow
4 objections to be made. So you want to do this before
5 Christmas?

6 MS. CROSS-GOLDENBERG: Yes, your Honor. And actually,
7 I am expecting a baby so --

8 THE COURT: Congratulations.

9 MS. CROSS-GOLDENBERG: Thank you, your Honor. Not
10 that that would ordinarily be appropriate to mention but I
11 definitely want to be here for Mr. Bennett's sentencing. So --

12
13 THE COURT: What is your due date?

14 MS. CROSS-GOLDENBERG: February 6. So the end of
15 January is going to be getting a -- so if we could do it a
16 little before the end of the year I will feel more confident
17 that I will be able to be here which I think is important given
18 the relationship that we've built.

19 THE COURT: I agree with that. So if we could do it
20 before the end of the year I'll be around. So the issue for me
21 is probation. So what's the earliest for probation? Is it
22 three days? Give us one second. We'll get the date in a
23 minute but let me tell you what's going to happen at that
24 sentencing hearing. We are going to come into court, this very
25 room. At that point I will go over with you and the lawyers

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1 everything I've received to make sure I haven't left anything
2 out. I'll tell you this is what I received and if there is
3 something I've missed you or your lawyer should tell me. I
4 will then go through the presentence report. If there are
5 objections I will acknowledge the objections. I will make my
6 findings under the sentencing guidelines and tell you what the
7 numbers are. And then at that point I will hear from the
8 lawyers. I will allow them to expand upon whatever they may
9 have written to me in their submissions. And to touched on, I
10 expect that they would touch on the various factors that I've
11 mentioned before, the factors that Congress has identified as
12 relevant to sentencing. After I've heard from the lawyers,
13 then I'll give you an opportunity to speak. You don't have to
14 speak but you certainly have a right to speak before I impose
15 sentence. And you would be very welcome to, so I will give
16 that opportunity. Ever after that I will then tell you the
17 sentence that I intend to impose. I'll explain my reasons for
18 that. I'll then check with the lawyers to make sure that I
19 haven't done anything illegal. Assuming it's not, then I will
20 move forward to sentencing formally. So that's how the process
21 will work.

22 How about Friday, December 19?

23 MS. CROSS-GOLDENBERG: The 19th, that would be
24 perfect, your Honor.

25 THE COURT: At two p.m. So that will be the day. If

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1 we need to change it for whatever reason Ms. Cross-Goldenberg
2 we'll let you know but we'll try to keep it to that date. Then
3 I guess I'll want the submissions from the defense generally
4 about two weeks before sentencing, so that would be December 5,
5 I guess and then the government by the 12th. OK. So any
6 questions with respect to the sentencing or the process by
7 which sentencing will line up, Mr. Bennett?

8 THE DEFENDANT: No, sir, your Honor.

9 THE COURT: All right. Then I guess the last issue we
10 need to deal with is the issue of bail pending sentencing.
11 I've communicated with the lawyers last night and it appears
12 that there's a dispute. The government intends to move for
13 Mr. Bennett to be remanded pending sentencing?

14 MS. CHOI: Yes, your Honor. Before we do that I was
15 just wondering if I could just have a moment to put a few
16 things on the record with regard to the conversations I've had
17 with defense counsel in this case?

18 THE COURT: Sure.

19 MS. CHOI: One is that one of the issues that the
20 parties had discussed over the course of the negotiations was
21 whether or not Mr. Bennett was going to give notice to the bar
22 of which he is a member of the present status of his case. And
23 it is my understanding from Ms. Cross-Goldenberg that that
24 notification happened approximately a month ago. And other
25 issue with regard to the forfeiture the parties have discussed

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1 that the, just so that Mr. Bennett's on notice, the computer
2 that was seized from his home that contains the child
3 pornography would be forfeitable property under the applicable
4 statute.

5 THE COURT: Anything -- you don't disagree with that?

6 MS. CROSS-GOLDENBERG: No, your Honor. Notification,
7 Mr. Bennett has on his own initiative notified the bar of his
8 conduct on August 22 I believe and, yes, he will now or at the
9 time of sentencing consent to the forfeiture of the computer
10 that contained the child pornography. There were several other
11 item seized and I understand he will get those back at the
12 conclusion of the case because they did not contain any
13 contraband.

14 THE COURT: OK. All right. That's fine. So let's
15 then talk about bail. Mr. Bennett has been on bail since his
16 arrest. As far as I know he's been in full compliance with the
17 conditions of bail with this supervision of the Pretrial
18 Services Office. What has changed of course is the standard is
19 now a little different. At the time of arrest it was the
20 government's burden to demonstrate in order -- the government
21 would have to demonstrate the person was in risk of flight or
22 danger to the community. Now the burden sort of flips because
23 you've now pled guilty to the crime, the presumption is that
24 you would be remanded or detained pending sentencing unless you
25 can demonstrate by clear and convincing evidence that you were

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1 not a flight risk or not a danger to the community. So I think
2 we all agree that's the standard at this point?

3 MS. CROSS-GOLDENBERG: Yes, your Honor.

4 THE COURT: And I referring to Title 18 of the U.S.C.
5 Section 3143.

6 MS. CHOI: Yes, your Honor. Except that I think that
7 here the crime is a crime of violence, so that the standard is
8 actually different than the one that was articulated by the
9 Court. I am happen my to explain that.

10 THE COURT: Yeah, do. I just heard about this last
11 night.

12 MS. CHOI: I am sorry, your Honor. So under
13 3143(A)(2) that statutory provision requires defendants who
14 have been found guilty of crimes of violence and are awaiting
15 imposition of a sentence to be detained until there are
16 exceptions. Under 3156(A)(4)(C), all child pornography
17 offenses including the one the defendant just plead guilty to
18 constitute crimes of violence. And there are exceptions under
19 3143(A)(2) which cannot be met under these circumstances
20 because defendant has pleaded guilty and the Court's accepted
21 his plea, we don't believe there is any substantial likelihood
22 that there will be a reversal of that guilty plea. And also
23 that the government in this case won't recommend that there
24 should be no sentence of imprisonment imposed with regard to
25 Mr. Bennett.

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1 So there's only one way statutorily to avoid remand
2 under these provisions which is under 3145(C) and that requires
3 both that there is, as you expressed, a clear and convincing
4 evidence standard. But as well that the defendant has shown,
5 clearly shown that there are exception reasons that his release
6 is not appropriate in this case and we believe that the
7 exceptional reason standard cannot be met. I don't know if you
8 would like us to start with that.

9 THE COURT: It wasn't clear to me that the crime that
10 Mr. Bennett pled guilty to was under 3143(A)(2), so that
11 gives -- I want to just nail that down.

12 MS. CHOI: Yes, your Honor. That's again under
13 3156(A)(4)(C) which makes reference I believe to Chapter 110 of
14 Title 18 which includes all the child pornography offenses.

15 THE COURT: 3156(A)(4)(C) any -- chapter --

16 MS. CHOI: Yes, your Honor.

17 THE COURT: And this crime that Mr. Bennett just pled
18 guilty to falls under one of those chapters.

19 MS. CHOI: Chapter 110, your Honor.

20 THE COURT: It's always frustrating that they use
21 chapter sections that don't peg with the code that I have in
22 front of me.

23 Any dispute about that, Ms. Cross-Goldenberg?

24 MS. CROSS-GOLDENBERG: Your Honor, we do believe there
25 exceptional circumstances.

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1 THE COURT: Any dispute that this is a crime that
2 falls under Chapter 110 and therefore is implicated under
3 3143(A)(2).

4 MS. CROSS-GOLDENBERG: No, your Honor.

5 THE COURT: All right. So then the standard is
6 different than the one I announced, Mr. Bennett. It's
7 basically, a mandatory -- it's mandatory that you be remanded.
8 The only exception is one that's been sort of judicially
9 created. I think as much as anything else under Section 3145
10 under a heading of review and appeal of a release or detention
11 order. The second circuit has nonetheless said the district
12 court -- I guess I would be repealing or reviewing my own
13 viewing which is metaphysical.

14 But in any event, I think the case law is clear that I
15 do have the authority to allow a person who has pled guilty to
16 be kept out on bail if there are exceptional circumstances and
17 if they can demonstrate by clear and convincing evidence that
18 they are not a risk of flight and not a danger to the
19 community. And the exceptional circumstances that's usually a
20 pretty tall mountain to climb. It includes things like if a
21 person is a cooperator and is engaged in active investigations
22 for the government or it includes things like where someone is
23 physically debilitated or they have family circumstances where
24 they're sole caretaker of an infant or disabled adult or
25 something like that. So I think I am anxious to hear what

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1 exceptional circumstances would apply here but sort of being in
2 compliance with supervised release -- excuse me -- being in
3 compliance with pretrial supervision or the bail conditions or
4 being just sort of actively employed and productively and
5 gainfully employed is not usually going to be enough.

6 So, Ms. Cross-Goldenberg, I guess it's your burden in
7 spades, so go ahead and tell me the exceptional circumstances.
8 I think the time being I am prepared to except that he's not a
9 risk of flight. I've not heard anything other than nature of
10 the crime to conclude that there's any reason to think there's
11 dangerous opinions here. Mr. Bennett has been in full
12 compliance as far as I know with all the conditions of his
13 bail. At least that's what Pretrial Services told me.

14 MS. CROSS-GOLDENBERG: Well, your Honor, let me just
15 start with the clear and convincing part, the risk of flight
16 and dangerousness.

17 THE COURT: Well, can I interrupt there?

18 Ms. Choi, are you contesting?

19 MS. CROSS-GOLDENBERG: Let me say one thing, your
20 Honor. Before that way back in October when Mr. Bennett was
21 first released there was a, he did make an internet posting
22 from a cellphone. That was discussed with Pretrial. He
23 doesn't have the phone any more and there have been no issues
24 at all related to anything like that since then. In November
25 he did take a trip, a work trip to California. He was a

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1 speaker at a conference. And Judge Ellis approved that travel.
2 He had a third party custodian with him the whole time. He was
3 prohibited from leaving hotel where the conference was.
4 Pretrial had given him a curfew of nine p.m. to be back in his
5 hotel. But the keynote dinner ran over, so he was a half hour
6 late getting back to the hotel room. And while they were
7 attending the keynote speech Mr. Bennett and his aunt actually
8 who was the third party had their cellphone ringers off. So
9 view either of those as a material issue with respect to the
10 conditions of the bail. That happened in October or very
11 beginning of November. So for the past ten months my
12 understanding also from pretrial is that he has been fully
13 compliant but I want to make sure that is clear so I am not
14 misrepresenting.

15 THE COURT: OK. Tell me about the exceptional
16 circumstances.

17 MS. CROSS-GOLDENBERG: OK. Well, your Honor, I think
18 that a lot of what goes into establishing what clear and
19 convincing evidence that Mr. Bennett is not a danger, not a
20 light risk in this case do rise to the level of exceptional
21 circumstances. As the Court may recall from our last
22 conference in this case, the search that was affected on
23 Mr. Bennett's apartment and that led to the discovery of the
24 child pornography was affected in February of 2013. He was not
25 arrested for eight months after that search. And in those

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1 eight months just the act of the search in the presence of a
2 law enforcement in the apartment and understanding of that it
3 was wrong to be doing what he was doing, in those eight months
4 there were no issues with him viewing child pornography. He
5 posed no danger during that time and that was before his
6 arrest.

7 Your Honor, he is employed as the Court may recall.
8 He is actually teaching down the block at the BMCC. He is
9 teaching courses on corrections and criminal justice. And
10 actually he just started the semester last week and so I do
11 think even if the Court doesn't view full-time employment or
12 regular employment as an exceptional circumstance, I think the
13 fact the semester just began last week and that not only would
14 he be leaving his students and school completely high and dry
15 but a remand today would completely obliterate any chance of a
16 career that he has following this case which already has -- as
17 I said he's notified the bar. He will likely at least be
18 suspended from the practice of law but at least he can continue
19 with his second career which is teaching.

20 THE COURT: But the timing was somewhat under
21 Mr. Bennett's control and at least there was a strong
22 likelihood of remand that should have been considered before
23 starting a semester. So I am not sure what to make of that.
24 To not plead guilty until a week into the semester and say it's
25 a reason not to remand me sort of looks a little manipulative.

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1 MS. CROSS-GOLDENBERG: Well, your Honor, I can assure
2 you that it's not. As the Court recalls from our last
3 conference there have been negotiations ongoing for many months
4 and to the extent there were delays in the process they were
5 all completely beyond Mr. Bennett j's control whether we could
6 obtain medical record and things like that were beyond our
7 control.

8 With respect to dangerousness, your Honor, I don't
9 know if the Court wants to see this but we've heard with the
10 government previously as part of the negotiations in this case,
11 we have had Mr. Bennett evaluated. And his the evaluation
12 couldn't be clearer that he doesn't pose a danger. The
13 conclusion is that he is not a pedophile. He is not dangerous,
14 that there was no escalation in his conduct that would suggest
15 a risk of a contact offense.

16 As we discussed little bit with your Honor at the
17 beginning of this session, he was battling depression. There
18 were other things going on in his life around the time of the
19 search that contributed to that depression. As of this time he
20 is not diagnosed with any mental illness but he has benefited
21 from the treatment that he has been undergoing as a result of
22 his Pretrial supervision. The reports from the provider that
23 he's been seeing at the request of Pretrial show that he's been
24 very engaged and very responsive to treatment in Pretrial, that
25 he has demonstrated genuine rehabilitation and that he would

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1 benefit from continued meaningful treatment. The report
2 concludes that he is an excellent candidate for supervision,
3 not incarceration and for treatment and rehabilitation.

4 And I think that there is actually a couple important
5 points in there. One is with respect to the whether he
6 actually poses a danger. And I think the report clearly and
7 convincing states that he does not. But it also considered the
8 fact that the treatment that he's been undergoing since he was
9 arrested in October has been productive and successful and he's
10 been very engaged in it. And the abrupt stop to that treatment
11 if the Court were to remand Mr. Bennett now he would not
12 receive any treatment for the foreseeable treatment. There is
13 absolutely nothing at the MCC. There is absolutely nothing at
14 the MDC. He would just be sitting there and that just seems
15 counterproductive to the entire philosophy of all of the goals
16 of sentencing that the Court just went over and to any sort of
17 rehabilitation that we might hope to get out of this process.

18 Your Honor, I think another exceptional thing about
19 Mr. Bennett is that from the beginning, meaning before he had
20 an attorney, before he was arrested, after the search he
21 expressed remorse for his conduct in communications with the
22 Department of Homeland Security over the items that were
23 seized. And again, he never contested the seizure or the
24 forfeiture of his computer which had the images on it but he
25 did request the return of his property that didn't contain any

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1 contraband. And even without an attorney he was forthcoming
2 and remorseful and it wasn't to the extent of pleading guilty.
3 He wasn't in that situation. He wasn't charged with a crime
4 but he did explain to them how devastating the impact of this
5 search and the effect of it will be made on him and the steps
6 that he was taking to turn his life around and as I said for
7 those eight months he wasn't even arrested. So it is very hard
8 for me to understand how someone can be left out on the street
9 for eight months without any pursuit of any charges against him
10 and then all of a sudden he becomes this, that there's just no,
11 absolutely no way to meet this burden that we have here.

12 And so I think, your Honor, I have two other points
13 that what I want to give -- and I apologize for not doing this
14 at the beginning -- but I want to introduce the Court to Jordan
15 Powell who is in the second row. He is Mr. Bennett's good
16 friend. He actually just started law school last month. I
17 guess he's in his first year. And he was present at
18 Mr. Bennett's -- I guess at the arrest actually -- and then
19 came with him to court on the day of his presentment and agreed
20 to serve as a third party custodian. So on the day that
21 Mr. Bennett was released while he, until I guess the electronic
22 monitoring and everything else was in place and Mr. Powell is
23 more than willing to continue in that role, to report to the
24 Court if the Court so desires and to do what the Court feels is
25 necessary, to continue to make sure that Mr. Bennett complies

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1 his with his bail continues as he has been doing for the past
2 ten months. And I think that's exceptional, your Honor, and I
3 think that the fact that a friend would stand up and say I have
4 that much confidence in you. And Mr. Powell's been in touch
5 throughout the case. He actually submitted to us a letter, a
6 character letter regarding Mr. Bennett to submit to the
7 prosecutor's office and the exceptional support that he's shown
8 to Mr. Bennett is exceptional in this case as well.

9 Your Honor, as I mentioned in my e-mail last night the
10 government told me on Wednesday evening that it was planning to
11 seek remand. I have a list of about 20 cases in this district
12 and several more in the Eastern District where in cases of this
13 nature individuals were left out on bail pending either
14 sentencing or sometimes after sentencing pending a voluntary
15 surrender. I think in considering exceptional circumstances,
16 not just in this kind of case but in all kinds of cases there's
17 always the question of whether there's a chance that the person
18 may not be sentenced to jail at all. And that certainly a
19 possibility in this case. There's no mandatory jail sentence
20 here and there are many cases in this district where judges
21 have imposed sentences of probation or time-served in these
22 cases. There has been as the Court knows, even the Second
23 Circuit was highly critical in the guidelines in these sorts of
24 cases. So that's one thing. And that's the same analysis
25 going to a drug case or another case that falls into that

1 category where individuals are left out on bail.

2 But, your Honor, just with respect to child
3 pornography cases even in this district, even where judges do
4 impose sentences of jail, Judge Castel, Judge Forrest, Judge
5 Gardephe, Judge Batts, Judge Marrero, even your Honor have left
6 out individuals, left them out on bail pending either
7 sentencing or the service of their sentence.

8 I had a case in front of Judge Kaplan a few years ago
9 where he sentenced the defendant to 24 months in jail and he
10 still gave him two months to voluntarily surrender and that
11 case contained facts that were much worse than the facts in
12 this case that contain actual attempts to solicit a meeting
13 with the child, actual conversation regarding actual contact
14 with children, things that pose much more risk and danger.
15 There's nothing like that in this case. And in fact it's the
16 opposite in this case when Mr. Bennett has offered such things
17 or others -- possibly the undercover in this case, I don't
18 know -- offered to arrange such meetings and Mr. Bennett
19 rejected it.

20 And so, your Honor, I can hand the Court a list. I
21 can hand the Court the evaluation that I think is as I said
22 clearly and convincingly shows that he is not a danger but it
23 also rises to the level of seconds exceptional circumstances
24 because in these sorts of cases it is rare to have a situation
25 where you have no attempts to arrange meetings with children,

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1 no conversations regarding even fantasizing about arranging
2 meetings with children and then when you have test results that
3 demonstrate that the individual is not dangerous and really
4 continued treatment of the kind that is already undergoing is
5 the best solution. And so I think all of that is exceptional,
6 your Honor. And for all of those reasons we think that bail
7 should be continued.

8 THE COURT: All right. Ms. Choi.

9 MS. CHOI: Yes, your Honor. I think that taking what
10 Ms. Cross-Goldenberg has said at face value those constitute
11 arguments that go to the first prong which is the clear and
12 convincing evidence of danger of risk of flight. I don't think
13 any of them rise to what the Second Circuit has articulated is
14 standard for exceptional reasons to allow for the exception to
15 the mandatory rule.

16 She speaks of his employment history, his present
17 employment and other individuals who would support him, but as
18 the Second Circuit has articulated they've expressly rejected
19 arguments such as going to school, being employed or being a
20 first time offender as to United States v. Scalia 360 F.3d 401,
21 a 2004 Second Circuit case. Courts generally do find exception
22 under certain circumstances but usually comes up as your Honor
23 knows when there is unique family or personal circumstances in
24 combination with some likelihood that the conviction was in
25 error or could later be challenged. Don't see those here.

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1 This is an individual who lives by himself.

2 Ms. Cross-Goldenberg doesn't make reference to any dependents
3 for whom there would have been to be some sort of provisions
4 made to deal with the incarceration. And I don't think that
5 there's any viable challenge to the that has just been accepted
6 by the Court.

7 In addition, I think Mr. Cross-Goldenberg does a good
8 job of articulating the 3553(A) factors. But they do, I think
9 the Second Circuit case law and other courts in this district
10 has made clear that these are not arguments that rise to high
11 standards as your Honor has articulated. I think the Pimentel
12 letter and the enhancements under the guidelines show the
13 seriousness of the offense in this particular circumstance.
14 Congress has made its determination that it is a crime of
15 violence. This is not a case where I think offense conduct
16 should be minimized and the reason the government will seek an
17 incarceratory sentence is because the nature of the videos in
18 this particular case was egregious. There were young victims.
19 There is pain and violence depicted in some of these images.
20 The defendant didn't just possess them but he distributed them
21 to other individuals.

22 And for all those reasons a substantial incarceratory
23 sentence would be appropriate here.

24 There is two other points I just want to briefly raise
25 with regard to the no treatment argument. I don't know what

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1 Ms. Cross-Goldenberg's basis for that assertion is. I know
2 that there are psychological treatment options available at the
3 MCC. At least that's my impression from other cases. And I
4 think the rest of the argument that's she's made about the
5 support just simply are things that the Court should take under
6 advisement at sentencing but they do not raise exceptional
7 circumstances under applicable Second Circuit case law, your
8 Honor.

9 THE COURT: All right.

10 MS. CROSS-GOLDENBERG: One moment, your Honor?

11 (Pause)

12 MS. CROSS-GOLDENBERG: Your Honor, as I said, I have a
13 list of cases here. I can run through them if the Court wants.
14 I know there is at least one case in the Eastern District right
15 now, U.S. against Lee, where Judge Gleason made the finding
16 that because the defendant was in treatment and was making
17 progress that that counted as exceptional circumstance in that
18 case in order to leave him out following his plea and before
19 the court's sentencing. And in that case the defendant pled to
20 a count carrying a five year mandatory minimum. So in that
21 case there was going to be definitely five years in jail. And
22 Judge Gleason recognizes where the defendant is making progress
23 in treatment which is the goal, the ultimate goal of this whole
24 thing is that this conduct never happened again that that is
25 the kind of exceptional circumstance a court can take into

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1 account.

2 And, your Honor, it's true Mr. Bennett lives alone.
3 Many arrangements would have to be made if he was remanded
4 today. He does own his apartment. I mean, in addition to
5 getting all of his personal affairs in order he does have a cat
6 which is at the apartment right now. His mother actually has
7 left or is leaving. She's not on an airplane right now on her
8 way do a medical mission in South Africa with a church ministry
9 that she works with. She is a nurse and she does it from time
10 to time but she just is leaving today to go to South Africa.
11 So we wouldn't have her to rely on in terms of helping to take
12 care of his things.

13 And the reality is, your Honor, the report which,
14 again, I am happy to hand up, I am not quite sure why the
15 government's is taking at face value because they have had the
16 report for over a month but it clearly concludes that
17 Mr. Bennett is not a danger. And I do think that in a case
18 like this the conclusion that there's nothing in either the
19 case conduct, the content of the videos, the conduct that led
20 to the arrest any of that that would suggest any kind of
21 escalating behavior that would pose a risk of any danger to a
22 child. So I think all of those are exceptional reasons, your
23 Honor.

24 THE COURT: I think Mr. Powell wanted to say
25 something. Maybe you should confer with him for a minute.

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1 MS. CROSS-GOLDENBERG: Sure. Thank you, your Honor.

2 (Pause)

3 MR. POWELL: Hello, your Honor.

4 I just wanted to speak on behalf of Mr. Bennett. I
5 think it's pretty clear that he is not a flight risk or danger
6 to the community but you do have something before you that you
7 have to prove that exceptional circumstances. And I think what
8 she mentioned is kind of what I wanted to mention earlier is
9 Darrell about a year ago, maybe a little less than that,
10 Darrell adopted this one month old cat named Button, really
11 cute cat, takes great care of him, feeds him clips his nails,
12 does all that great stuff. I personally couldn't take care of
13 him. I am on campus at Fordham. I don't know anybody that
14 would be able to take care of him and I think that represents
15 an extenuating circumstances and maybe give you some discretion
16 to kind of lean towards that.

17 THE COURT: OK. Thanks, Mr. Powell, and good luck to
18 you in your legal studies.

19 I guess the new fact that's come up since your last
20 spoke, Ms. Choi, is the cat.

21 MS. CHOI: Your Honor, I would presume that Mr. Powell
22 could help Mr. Bennett make arrangements for that particular
23 cat even if he could not himself make the arrangements. As
24 your Honor noted, the defendant's been placed on notice of the
25 potential for his incarceration since at least the time of his

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1 being charged in October of last year, if not previous to that.
2 And in Lia itself there was a situation in which there were
3 several children which the defendant took care of that one of
4 whom had a medical condition I believe and the Second Circuit
5 rejected that argument saying that you should have made
6 arrangements ahead of time and that's not sufficient for
7 purposes of meeting the standard.

8 THE COURT: All right. Let me --

9 MS. CROSS-GOLDENBERG: One second, your Honor?

10 (Pause)

11 MS. CROSS-GOLDENBERG: Just on that last point, your
12 Honor, I just want to be clear. Even though the government had
13 proposed a possible plea agreement several months ago I believe
14 the beginning of June, possibly the end of May, the first time
15 we heard that the government's seeking remand in this case was
16 Wednesday evening. So to be clear, and as I said, I've
17 personally had many cases where this hasn't even been an issue,
18 people in my office have had cases where this hasn't been an
19 issue. The Court itself has permitted at least one individual
20 I know of to remain out following a plea.

21 THE COURT: Who are you referring to?

22 MS. CROSS-GOLDENBERG: Your Honor, U.S. against Gin
23 which was 09 --

24 THE COURT: I know the case.

25 MS. CROSS-GOLDENBERG: But as I said --

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1 THE COURT: I think that was case imposed no jail time
2 at lease initially.

3 MS. CROSS-GOLDENBERG: Exactly, your Honor, which is a
4 possibility in this case. I mean as I said, Judges Jones,
5 Griesa, your Honor, Batts, Marrero, I believe many judges in
6 this district have imposed non incarceratory sentences in cases
7 like this. And even in cases where the incarceration is
8 mandatory judges have permitted people to remain out following
9 their plea. So there absolutely is no reason why Mr. Bennett
10 all along should have anticipated that this was a done deal,
11 especially since the government hadn't indicated it was going
12 to pursue this until Wednesday evening.

13 THE COURT: OK. Well, this first hit my radar screen
14 last night at 8:30 when I inquired as to whether there would be
15 any seeking a remand or altering bail condition. Shame on me
16 for not figuring out that this was a 3143(A)(2) case. I hadn't
17 realized that so I thought I'd be applying the standard with
18 respect to the fair and convincing evidence as to risk of
19 flight, dangerousness and if there were the standard I think I
20 would be continuing bail. Because we're under a different
21 statute and because it's a statute that's mandatory remand
22 unless there are exceptional circumstances that alters the
23 analysis certainly, it seems to me that the main argument put
24 forward for exception circumstances are really the fact that
25 Mr. Bennett is engaged in productive outpatient treatment, that

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1 he is teaching and that he's just begun a semester and that he
2 has a cat. I don't dismiss any of those. I don't think that
3 those are trivial. I don't think they're minor. I don't think
4 however that they individually or collectively rise to the
5 level of the kind of exceptional circumstances that are
6 contemplated under the statutes here.

7 I think the rest of argument made by Ms. Cross
8 Goldenberg are really arguments against the statute and
9 arguments for the maybe a different approach in cases like this
10 one and in cases involving treatment. But I don't think that
11 they really advance exceptional circumstances in this case that
12 would justify overriding what is the clear directive to
13 Congress that crimes like this one require remand. So I have
14 to call these the way I see them.

15 Mr. Bennett, it's sort of like an umpire in a ball
16 game, you know this is what Congress has said. This is the
17 standard and I don't think that these things rise to the level
18 of exceptional circumstances that would justify thwarting the
19 will of Congress that there be an automatic remand.

20 So I will respectfully deny the motion by
21 Ms. Cross-Goldenberg on your behalf and I'll remand you. And
22 you'll get credit for the time you served between now and
23 sentencing but I am afraid that the statute is clear and I
24 don't think the exceptions that have been offered are
25 sufficient to justify keeping you out.

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1 MS. CROSS-GOLDENBERG: One second, your Honor?

2 THE COURT: Yes.

3 (Pause)

4 MS. CROSS-GOLDENBERG: Your Honor, Mr. Bennett would
5 like to address the Court. But I do just, I want to make clear
6 that those were not the only exceptional circumstances and I do
7 think that Dr. Barday's report which I have --

8 THE COURT: I mentioned the report.

9 MS. CROSS-GOLDENBERG: -- is exceptional. And to the
10 extent that this is the Court's view, I would ask that the
11 Court stay the decision today, take a copy of the report so
12 that it has a chance to review it and that we come back next
13 week so that the Court could have all the facts because I do
14 think the conclusions are exceptional.

15 THE COURT: But staying the decision, I think the
16 default for staying the decision is remand. The statute orders
17 remand. The defendant's burden to articulate exceptional
18 circumstances that would justify not remanding him. So if you
19 want me to revisit this later or make additional arguments or
20 submissions later then that's fine but I don't think that the
21 result would be that I put this off for a couple weeks to
22 consider that.

23 Mr. Bennett.

24 THE DEFENDANT: Can I just address you?

25 THE COURT: Certainly.

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1 THE DEFENDANT: I would like to ask you if possibly I
2 can get even two days. I know that there's a huge possibility
3 of me being incarcerated for this. I've known that all along.
4 But I did not know at the time of my plea that I would be
5 immediately remanded or even if there was a possibility. I did
6 not learn this until Wednesday. I would not have taken on the
7 position that I have now teaching this semester. I would have
8 moved things. I would have gotten rid of my animal. I would
9 have talked to my mother about it. Everything is just there.
10 Even if I was given 24 hours to make it right at the school,
11 let them know I am leaving, to call movers to move things out
12 of the apartment, but I really did not prepare for this in any
13 way or else I promise you, your Honor, I would have come here
14 with given the guilty plea, having done the things that were
15 necessary to not put people in -- I mean, I rent my apartment.
16 I don't know who would go in. And I suppose Jordan can help me
17 but I mean everything's just there. It's nothing. I've done
18 absolute nothing. And I understand that I should have done due
19 diligence. I didn't know there was a possibility, your Honor.
20 I promise I would done the things that needed to be done. So I
21 am asking if even that you give me 24 hours or 48 hours and
22 just and I promise that I will be at whatever facility you
23 order me to go to.

24 THE COURT: Well, look. Again, I am sympathetic. I
25 am dealing with a statute and cases that I think are pretty

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1 clear about what the standard is. And so people obviously need
2 to get their affairs in order and there's always loose ends
3 that need to be tied up but it's not clear to me that's not
4 going to be true in most cases or create incentive for people
5 to not get their affairs in order to till after the argument.
6 So I think there's danger to my doing that. And I am not sure
7 what can't be done by the telephone now. You obviously need to
8 get assistance to help wrap up the affairs.

9 THE DEFENDANT: It wouldn't take longer than 24 hours
10 to have the movers get all the things out of my apartment but
11 everything is there. I would have to find ways to pay bills.
12 All of those things, I could find ways to do within hours. And
13 I know it was probably -- but I just want to say I really
14 don't -- I feel bad for my students that I won't be able to at
15 least say something to the school or make it right. I mean --

16 THE COURT: But what -- I -- OK. What would 48 hours
17 get you on that score?

18 THE DEFENDANT: Immediately leaving here I would go to
19 BMCC and let them know that I have to resign effective
20 immediately. I would then call movers and I would have movers
21 come to my house immediately to move everything. I would take
22 my kitten to the ASPCA and I would do all of that within 24
23 hours. But I just don't want to leave.

24 THE COURT: But some of those things can be done by
25 phone.

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1 THE DEFENDANT: Well, I have no family here. Jordan
2 is the closest person I have here. He is in law school and I
3 just don't want to be a burden to everybody. It's not like I
4 have family here where I can call up and say here's my key.
5 Take care of this and that. I would assume that people would
6 just go in and evict me at some point because I am not paying.
7 Within 24 hours I could get a lot done and I will be here. I,
8 obviously, I would not go anywhere. I would be where ever you
9 would report for me to be. But I just don't know what would
10 happen to all of the things and put somebody people in a bind.

11 MS. CROSS-GOLDENBERG: Your Honor, it would be some
12 time before he has phone access at either of the jails and
13 certainly it would be days if not weeks before any visitors are
14 allowed to see him because there is a process that involves
15 mailing a form and mailing it back and approval. So it's just
16 not the fact that he would be able to do it right away. And I
17 think if the Court stayed, it's not comfortable staying the
18 remand decision, I understand the Court's position in terms of
19 a fallback but the remand position only kicks in following a
20 finding of guilt. So if the Court were to stay its original
21 finding to not take effect until next week --

22 THE COURT: Look. I've already accepted the plea and
23 so if this was going to be a deal breaker for the plea then I
24 guess we should have dealt with this first. So I don't think I
25 can take a back. I know some judges do that and it seems to me

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1 a lot of that is just sort of fixing to get around an
2 unpleasant duty imposed by a congressional statute and I don't
3 think judges get to do that. What rises to the level of
4 exceptional circumstances? And so is it exceptional that
5 somebody's betting treatment? It's not that exceptional. It's
6 admirable. It's good. I agree with what Ms. Cross-Goldenberg
7 says. This is the goal in many ways of punishment is to make
8 sure that a person is in a position where they don't reoffend
9 and where they are coming out stronger than what they went in
10 as. But I don't know that it's exceptional. At least of the
11 facts that have been conveyed to me here today. The fact that
12 somebody has a job, a teaching job it means there are other
13 people who depend on you but most jobs involve people who
14 depend on you. The timing is unfortunate. The fact that
15 there's a cat, the fact that there's things to be done before
16 one goes into custody is exceptional and that's fairly
17 ordinary. I guess in some ways what is unusual -- I don't know
18 if it's exceptional -- it didn't dawn on anybody until a day
19 and a half ago. Again, the only reason I asked last night
20 about an e-mail at 8:30 was -- so I am not sure why this is
21 such a late breaking set of considerations but these are not
22 considerations that every defendant doesn't have to deal with
23 when they are facing a prospect of perhaps going in.

24 Ms. Choi, what am I supposed to do about a cat and
25 movers and apartments and all that sort of thing?

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1 MS. CHOI: Your Honor, to be clear, perhaps, we should
2 have given prior notice. I presume that the facts are pretty
3 state forward in talking to my chief but you should make sure
4 that defense counsel is aware if it which is why the notice
5 came on Wednesday. Your Honor, again, I don't think that these
6 circumstances are any different for any other defendant that is
7 convicted of a crime of violence. The statute is clear that
8 remand is default statutory requirement. I don't think that
9 getting your affairs in order rises to the level as articulated
10 by Second Circuit as what constitutes an exceptional reason for
11 him to not fall within the auspices of every other defendant
12 should be treated against this particular standard and Congress
13 has made that determination as such. I don't know what else
14 there is to say about it.

15 MS. CROSS-GOLDENBERG: It's not the fact that
16 Mr. Bennett is in or receiving treatment that I think makes it
17 exceptional. That's an automatic requirement of everyone on
18 Pretrial supervision or charged. That is not what makes him
19 exceptional. What makes him exceptional is his engagement in
20 treatment, his responsiveness to that treatment and the genuine
21 rehabilitation that the Pretrial provider has indicated that he
22 has been making. And so I do think that's exceptional because
23 many people as they go through this process have no interest in
24 engaging with their treatment provider, especially one that's
25 court ordered. They have no interest in making any progress or

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1 in delving in issues that may have led to their arrest or their
2 conduct in the case and that's not Mr. Bennett and I think
3 that's exceptional. And I think that in light of his, even the
4 eight months that he was out that he was unpursued by
5 authorities the eight months after his search where he
6 demonstrated that he even without any supervision or
7 requirements was not a danger to the community and continued to
8 live --

9 THE COURT: I am not worried about the danger to the
10 community or risk of flight.

11 MS. CROSS-GOLDENBERG: But that's an exceptional fact.
12 He had eight months when he wasn't even charged with a crime
13 and he didn't return to viewing these sort of images. That's
14 exceptional.

15 THE COURT: I don't know that I am prepared to agree
16 to that. I am going to take a break for a minute to think
17 about this and also I what also want to confer with the
18 marshal. So if you could just sit tight for about five
19 minutes, OK.

20 (Recess)

21 THE COURT: I thought about this further. I also
22 spoke to the marshal. I stand by my decision respectfully and
23 reluctantly I understand that this has real implications for
24 life. I will allow this. I will allow Mr. Bennett to make
25 some phone calls. You can use the phone in the robbing room

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1 with the marshal, will allow him before he goes to the cell
2 block to make calls to sort of call the Borough of Manhattan
3 Community College and others to make some arrangements. I
4 think things like moving and apartments, that stuff doesn't
5 does need to be resolved I would think today.

6 The situation of your employer and students is
7 something that should be resolved sooner rather than later.

8 The cat I think that is something that is going to be
9 require somebody like Mr. Powell to at least step up and take
10 the cat to the ASPCA or someone else who can take care of the
11 cat. That's something that will have to be done but with the
12 assistance of friends, I don't think -- I am not going to delay
13 remand for purposes of the cat. But you can make arrangements
14 with Mr. Powell.

15 So, I'm sorry, Mr. Bennett. I know you are
16 disappointed. I think that's the reality of the statutes here
17 and that's the way I perceive my job. That is the call that is
18 appropriate under the circumstances, OK.

19 THE DEFENDANT: Thank you.

20 THE COURT: All right. So let's do that. So the
21 marshal's here. If you want to give your keys and things to
22 Mr. Powell. That will enable him to get easy access to your
23 apartment, you can do that. And then you can use my robing
24 room where there's a phone. We can help you get that done and
25 you can go downstairs.

E95AABENP

Plea

1 All right. Thank you very much.

2 Mr. Powell, thank you for your being here today for
3 your remarks and helping out. I know it means a deal to
4 Mr. Bennett.

5 (Adjourned)

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